HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.W.P. No. 724 of 2002

Date of Decision:. 17.4.2007

Divisional Manager, HPFC ……. Petitioner.

Versus

Jasbir Singh …….. Respondent.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? Yes.

For the petitioner : Mr. Neel Kamal Sod, Advocate.

For the respondent : Mr. Sandeep Kaushik, Advocate.

Sanjay Karol, J. (Oral)

This judgment is being dictated in open Court in presence of the learned counsel for the parties.

The dispute pertaining to respondent Jasbir Singh, was referred to the Labour Court / Industrial Tribunal, Himachal Pradesh, on which basis on 25.11.1999, this Court framed the following issue:-

> "Whether the termination of the petitioner is in violation of Section 25-F of the I. D. Act, if so, to what relief the petitioner is entitled to? …OPP

A claim petition titled as Jasbir Singh vs. Divisional Manager, H. P. State Forest Corporation (Reference No. 144 of 1997), was filed stating therein that Shri Jasbir Singh had worked with the respondent – Corporation between 1988 and 1990 and inspite of having

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Whether reporters of Local Papers may be allowed to see the judgment?

more than 240 days in a calendar year, his services were abruptly disrupted in utter violation of the provisions of Section 25-F, 25-G & 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

In the reply filed to the claim petition, the preliminary objection with regard to the claim being time barred i.e. more than 10 years, has been taken. On merits, the claim was seriously disputed and it is denied that he had been in continuous, uninterrupted employment with the employer for more than 240 days prior to the date of disengagement. The employee is himself absented and did not report back for work. It is, however, admitted that he has been in employment with the Forest Corporation.

After a detailed inquiry, considering the entire material on record, the Presiding Officer, H.P. Labour Court vide award dated 20th December, 2001 held that the employee had been in the employment of the employer for more than 240 days preceding 12 months from the date of his disengagement. The Tribunal also did not accept the plea of the petitioner that the employee had abandoned the job. There was no material on record to show and establish that the employee had abandoned the job himself. However, keeping in view the facts and circumstances, the Court moulded the relief by not awarding back wages to the employee while directing him to be reinstated in the service from the date of reference. The employer - petitioner has assailed the award primarily on the ground of delay and laches.

Shri Neel Kamal Sood, learned counsel for the petitioners has relied upon AIR 1964 Supreme Court 752 titled as ***The Bombay Gas Co. Ltd.,*** vs. ***Gopal Bhiva and others*** , AIR 2006 Supreme Court 2670 titled as ***Assistant Engineer CAD Kota*** vs. ***Dhan Kanwar***., 2006 (6),

SCC 221, titled as ***Reserve Bank of India*** vs ***Gopinath Sharma and another***.

In fairness, the counsel has also brought to my notice the judgments delivered by this Court reported in ***Deepa Ram*** vs. ***State of H.P. & Ors*** (2005 (1) Himachal Law Journal page 248) and also in CWP No. 812 of 2000 titled as ***Ramesh Chand*** vs. ***Union of India***, CWP No. 95 of 2000 titled as ***Divisional Manager*** vs. ***Mohinder Kumar*** and CWP No. 1548 of 2002 titled as ***Yash Pal*** vs. ***State of H.P. & Others.***

Mr. Sandeep Kaushik defended the award by reiterating the stand taken by the parties before the Tribunal as also relying upon AIR 1964 Supreme Court 752 titled as ***The Bombay Gas Co. Ltd.,*** vs. ***Gopal Bhiva and others,*** 1999(6) SCC page 82 titled as ***Ajaib Singh*** vs. ***Sirhind Cooperative Marketing –cum-Processing Service Society Limited and another ,*** 2000 (IX) SCC 496 titled as ***Gurmail Singh*** vs. ***Principal Govt. College of Education and others***, AIR 2006, SC 2614, titled as ***Manager (Regional Director) RBI*** vs. ***Gopinath Sharma & anr***,

While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principles of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In ***Deepa Ram's case (supra),*** there was a delay of 12 years. In ***Ramesh Chand's case (supra),*** there was a delay of 9 years. In ***Mohinder Kumar's case (supra),*** there was a delay of 14 years.

In ***Bombay Gas Co., Limited (supra),*** the apex Court has categorically held that such of all those employees, who are entitled to take the benefit of Section 33 C(2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision. In the absence of any provision for limitation, it may not be open to the Court to introduce limitation on the grounds of fairness and justice. ***Ajaib Singh's case (supra),*** has been considered by this Court both in ***Deepa Ram's case*** and ***Ramesh Chand's case***. ***Gurmail Singh's case (supra),*** has also been considered by this Court in ***Ramesh Chand's case***.

In ***Assistant Engineer CAD Kota (supra),*** the Court was dealing with the case where the award had been passed particularly when the concerned section of the department had been abolished and there was no post available for reinstating the workman. The said decision is in the peculiar facts and circumstances of that case.

In ***Manager, Regional Director, RBI (supra),*** the Court held that there was unrebutted documentary proof on record to show that the employee had worked only for 58 days, therefore, in the facts of that case adjudication of the matter after 13 long years was found to be unjust and perverse. In these circumstances, the Court interfered and set aside the award passed by the Industrial Tribunal, which is also not the case in hand.

The fact that the Tribunal has come to this conclusion that the employee has not abandoned the services and has been in continuous and uninterrupted unemployment for more than 240 days preceding 12 calendar months from the date of his termination, is not seriously disputed before me also. The fact that the claim of the petitioner was also pending

before the Conciliation Officer prior to the reference being made, for a considerable long period, is also not disputed before me. The fact that the claim of the petitioner was also pending before the Conciliation Officer prior to the reference being made, for a considerable long period, is also not disputed before me.

In this view of the matter, I see no reason to interfere in the well reasoned and considered award dated 20^{h} of December, 2001 given by the Tribunal in Ref. No. 144 of 1997, titled as Jasbir Singh vs. Divisional Manager, HPSFC.

The writ petition is dismissed with no order as to costs.

(Sanjay Karol)
Judge.

April 17, 2007
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